IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

Crl.MC.No. 2632 of 2007()

(CRIME NO.325 OF 2006 OF MALAYINKEEZHU POLICE STATION)

PETITIONER: COUNTER PETITIONER IN CRL.MP.NO.572 OF 2007:

ROBY DAS @ THANKUTTAN, S/O. NATARAJAN,
AGED 45 YEARS, RESIDING AT AYAKOTTU MELE VEEDU,
KULANGARAKKONAM, PALLICHAL VILLAGE,
THIRUVANANTHAPURAM.

BY ADV. SRI.G.P.SHINOD
SRI.RAM MOHAN
SRI.MANU.V.

RESPONDENTS: STATE AND PETITIONER IN CRL.MP:572 OF 2007:

1. **THE STATE OF KERALA,**
   REPRESENTED BY ITS PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. **THE CIRCLE INSEPCTOR OF POLICE,**
   KATTAKKADA POLICE CIRCLE, KATTAKKADA POLICE STATION, THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI. P.RAVEENDRA BABU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C.No.2632 of 2007

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Dated this the 16th day of November, 2007

ORDER

Petitioner has come before this Court with this petition under Section 482 Cr.P.C aggrieved by the impugned order by which a default bail granted in his favour has been cancelled by the learned Sessions Judge.

2. The petitioner faced allegations in a crime registered, inter alia, under Section 302 I.P.C. He was granted bail as per order of the learned Sessions Judge subject to conditions. Such bail was granted as the accused had the indefeasible right under the provisio of the Section 167(2) to be released on bail when final report is not filed within a period of 90 days from the date of the 1st remand. The bail was granted subject to conditions. The conditions included the following:

> ii) That they should not enter the limits of the Police station in which the occurrence took place, except for the purpose of appearance before the Investigation Officer, until further orders.
>
> iv) That they should not be found involved in any other crime while on bail"

3. The petitioner was thus released from custody. While

he was on bail, in that case, a later crime was registered as Crime No.30/07 of the same police station (Malayinkeezh Police station) That crime was registered alleging commission of offences punishable, inter alia, under Section 308 read with 149 IPC. The petitioner was arrested in that crime. He has subsequently been released on bail in that crime also conceding the right of indefeasible bail under the proviso to Section 167(2) Cr.P.C.

4. The Police filed a petition before the learned Sessions Judge for cancellation of bail under Section 439(2) Cr.P.C. It was contented that the petitioner had committed breach of stipulations of conditions ii and iv in the earlier bail order. The learned Sessions Judge, by the impugned order, took the view that as there has been violation of conditions ii and iv the bail granted to the petitioner is liable to be cancelled.

5. The learned counsel for the petitioner submits that the learned Sessions Judge had not applied his mind to the question in the proper perspective. Merely because a subsequent crime has been registered, it cannot lightly be assumed that the

conditions have been violated by the petitioner. It was obligatory that the learned Sessions Judge must have considered the nature of the allegations raised against the petitioner in the subsequent crime and satisfied himself that there is merit or substance in the said allegations. Merely because an allegation has been raised, merely because a crime has been registered on such allegation or even merely because charge sheet has been filed after investigation of that crime, it cannot be assumed that the conditions have been violated by the petitioner. If such an over simplistic view were taken, it will become very easy for the Police officials to deny the benefit of the bail earlier granted to the accused by the Courts. Alert application of mind to the facts by the Court is necessary before any conclusions in favour of cancellation of bail is drawn, submits the learned counsel.

6. It is obligatory on the part of a judicial officer considering the question of cancellation of bail to go through the materials available anxiously to decide the same whether the allegations are true, sufficient and acceptable to justify the resort to powers available with the Court to cancel the bail

already granted.

7. The learned counsel for the petitioner rightly relies on the decision in **Mehaboob Dawood Shaik v. State of Maharashtra** 2004(2) SCC 362. The Supreme Court has observed that mere assertion by a witness or even the Police should not be utilized as a ground for cancellation of bail routinely. Otherwise, there is amble scope for making such allegations to nullify the bail granted. The Court before which such allegations are made should in each case carefully weigh the acceptability of the allegations and pass orders as circumstances warrant in law. Such matters should be dealt with expeditiously, so that actual interference with the oridnary and normal course of justice is nipped in the bud and an irretrievable stage is not reached. (Para 11).

8. Allegations raised cannot be naively or meekly swallowed. The allegations raised must be subjected to judicial scrutiny. Of course at this stage it is unlikely that there shall be any oral evidence on the crucial aspects. It is for the court

concerned to go through the materials available and take a decision as to whether bail granted deserves to be cancelled or not. I have been taken through order passed by the learned Sessions Judge. The learned Sessions Judge appears to have taken note of the fact that the petitioner was released on bail subject to conditions. The learned Sessions Judge appears to have taken note of the subsequent registration of the crime in which allegations are raised against the petitioner. Those allegations would show that the conditions have been violated. The learned Sessions Judge appears to have noted the antecedents of the petitioner. He has been granted bail despite the antecedents. Unless there has been subsequent abuse of the liberty granted, such antecedents by itself cannot justify the cancellation of bail under Section 439(2) Cr.P.C. Having gone through the impugned order in detail I am unable to find an anxious application of mind to the question whether allegations raised can safely be accepted or not. For the same reason the impugned order does warrant interference.

9. This Court now has two option. Either this court itself

can go through the materials available and take a decision as to whether the allegation can be accepted or in the alternation. The matter can be sent back to the learned Sessions Judge to pass appropriate orders expeditiously. I choose to adopt the further course.

10. In the result this Crl.M.C. is allowed. The impugned order is set aside and the learned Sessions Judge is directed to pass fresh orders in accordance with law and in the light of the above observations, expeditiously.

11. The petitioner shall appear before the learned Sessions Judge on 30.11.07 to continue with the proceedings.

12. Communicate this order to the learned Sessions Judge forthwith.

(R.BASANT, JUDGE)

sj